

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1049 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP TRIBHOVANDAS PUJARA

Versus

SUDHIR SINHA COMMISSIONER OF POLICE

Appearance:

MR MIG MANSURI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Rajkot City, Rajkot passed an

order on July 15, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA Act.

#. The detaining authority took into consideration three offences registered against the detenu under the Bombay Prohibition Act that he is a "bootlegger). While considering the less drastic remedies, the detaining authority observed that it is not possible to resort to proceedings under section 57(c) of the Bombay Police Act as tow convictions are required in respect of the person against whom the proceedings are to be held. Whereas in the instant case, two offences were pending investigation and one case is pending trial and therefore, the proceedings under section 57(c) of the Bombay Police Act cannot be resorted to. Under the circumstances, the detention under the PASA Act is the only efficacious remedy that can be resorted to and therefore, the order was passed.

#. The detenu-petitioner has challenged the order of detention on various grounds. However, Mr. Mansuri, learned advocate appearing for the petitioner has restricted his arguments to the ground that the order of detention is without application of mind. The detaining authority has not applied his mind while considering the possibility of resorting to less drastic remedies. In order to substantiate his argument, Mr. Mansuri submitted that the detaining authority has observed that resorting to proceedings under section 57(c) of the Bombay Police Act is not possible as minimum two convictions are required whereas in fact, if the provision of law is seen, minimum three convictions are necessary. Mr. Mansuri, therefore, submitted that the possibility of resorting to less drastic remedy is only mechanically exercised by the detaining authority and therefore, the order would stand vitiated on account of non application of mind by the detaining authority.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it is clear that the detaining authority considered the possibility of resorting to extermnt proceedings under section 57(c) of the Bombay Police act. The authority observed that this cannot be resorted to because minimum two convictions are required whereas in the instant case, out of three cases, two are pending investigation and one is pending trial and therefore, the proceedings under

section 57(c) are not possible to be resorted to.

#. In this regard, it may be noted that if the provision of law i.e. section 57(c) is perused, it is very clear at a very first glance that not two but minimum three convictions are required for taking action against a person under this provision. This, therefore, would reflect non application of mind on the part of the detaining authority. This would also indicate mechanical approach adopted by the detaining authority while considering possibility of resorting to less drastic remedies. The order of detention, therefore, cannot be sustained. The petition, therefore, deserves to be allowed.

#. In view of the above discussion, the petition is allowed. The detention order dated July 15, 1999 is hereby quashed and set aside. The detenu - Dilip Tribhovandas Pujara is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-